IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 956 of 1997

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
CHANDUBHAI RAMABHAI VAGHARI & 1 - Opponent(s)

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Appearance :
MR AJ DESAI, APP, for Appellant(s) : 1,
MR PRAFUL J BHATT for Opponent(s) : 1,
MR MIG MANSURI for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgement and order of acquittal dated 2.6.1997 passed by the learned Judicial Magistrate, First Class, Anand in Criminal Appeal No.4326 of 1996 whereby the learned Judge has acquitted the respondents of the offences alleged against them.

2. The prosecution case, in short, is to the effect that at the relevant time the respondents were working as Mail Agent and Mail guard respectively. On 16.2.1996 one Account bag (money bag) of the Department was entrusted to them and the allegation is that they have misused and appropriated the amount contained in the said bag. Accordingly a complaint came to be filed against them for the alleged commission of offences punishable under sections 409 and 114 of IPC. The said case was numbered as Criminal case No.4326 of 1996.

3. After recording necessary evidence, the learned Magistrate acquitted the respondent of the offences with which he was charged. It is against the aforesaid judgement and order the present appeal has been filed.

4. Mr. A.J. Desai, learned APP, appearing for the State

submitted that the respondents accused are public servants and during their duties they were entrusted with Account bag and they have misused the amount containing the bag. He submitted that the evidence shows that they were entrusted the bag containing money which itself would show that they have committed the alleged offence.

5. Learned Advocate appearing for the respondents submitted that the learned Magistrate has considered all the aspects and evidence on record and did not find sufficient evidence to convict the respondent and therefore this Court may not interfere with the impugned judgement and order.

6. At the outset it is required to be noted that the scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

7. I have heard learned Advocates for he respective parties. As a result of hearing and perusal of the record it is found from the record that there are contradictory evidence on record. The trial court has discussed the entire evidence in detail discussing all the evidences. The finding of the trial court is that it is not established that the Post Master does not weigh the blank bag and again weigh the bag after filling up the same. It was also not produced on record as to how much money was put in the bag and the details of the amount. The notes in question were not recovered from the rspondents.

The trial court also found that looking to the entire evidence the only case is that the bag in question was stolen. The panchas have not supported the recovery and discovery panchnama. It is also evident from the record that signature was obtained on ready panchnama. In view of these state of evidence on record, I am of the view that the Trial Court has rightly acquitted the respondents. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

8. In the premises aforesaid, the appeal is required to be

dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

9. By order dated 16.3.1998 this Court had directed to invest the amount of Rs.51000/- in fixed deposit. It is submitted that since the recovery has already been made from the respondents, it would not be appropriate to have double recovery. Therefore, if the amount is already recovered from the respondents, it will be open to the respondents to withdraw the fixed deposit amount of Rs.51000/- i.e. 25500/- each. However, the trial court shall examine whether amount is already recovered from the respondents before allowing the withdrawal of amount.

[K.S. JHAVERI, J.]

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